

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
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UNITED STATES OF AMERICA,

-AGAINST-

ORDER AND MEMORANDUM  
05-CR-0348-01 (DRH)

ALTON FINNEY,

DEFENDANT.

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A P P E A R A N C E S:

For the Government:

Benton J. Campbell  
United States Attorney  
Eastern District of New York  
One Federal Plaza  
Islip, New York 11722  
By: Nicole Boeckmann, A.U.S.A.

For Defendant:

Public Defenders of New York, Inc.  
One Federal Plaza  
Central Islip, New York 11722  
By: Tracey L. Eadie Gaffey, Esq.

HURLEY, Senior District Judge

By letter dated June 4, 2008 defendant has moved to be resentenced pursuant to 18 U.S.C. § 3582(c)(2) and U.S.S.G. § 1B1.10 (as amended effective March 3, 2008).

Defendant pled guilty on September 27, 2005 to a single count indictment charging him with distributing and possession with intent to distribute 5 grams or more of cocaine base in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B). He was sentenced by me on March 31, 2006 to 72 months of imprisonment to be followed by four years of supervised release. Reference to the Federal Bureau of Prison's Inmate Locator system indicates a projected release date of July 6, 2009.

It is agreed by the parties that the motion is addressed to the Court's discretion. In exercising that discretion, the Court should view the factors listed in § 3553(a) in conjunction with the lowered guideline range triggered by the crack guideline amendment. Here, the initial guideline range in effect at the time of sentence was 84 to 105 months. The current adjusted advisory guideline range is 70 to 87 months.

Having reviewed the original presentence report, the updated presentence report dated July 7, 2008, as well as the submissions of counsel, and having considered the factors listed in § 3553(a) together with the applicable policy statements issued by the Sentencing Commission, defendant's motion is granted to the extent that the term of imprisonment set forth in the judgment of March 31, 2006 is reduced from 72 months to time served; in all other respects, the March 2006 sentence shall remain in full force and effect.

SO ORDERED.

Dated: Central Islip, New York  
February 23, 2009

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DENIS R. HURLEY, U.S.D.J.